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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,680	11/25/2003	Brian Gerrard Devlin	CL/V-32782A	8875
31781 7590 09/18/2008 CIBA VISION CORPORATION PATENT DEPARTMENT 11460 JOHNS CREEK PARKWAY DULUTH, GA 30097-1556				
EXAMINER VARGOT, MATHEU D				
ART UNIT		PAPER NUMBER		
1791				
MAIL DATE		DELIVERY MODE		
09/18/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/723,680

Applicant(s)

DEVLIN ET AL.

Examiner

Mathieu D. Vargot

Art Unit

1791

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stockinger et al in view of the admitted prior art as set forth in the instant specification at page 2, line 22 through page 3, line 5, Thompson (see col. 4, lines 27-42, particularly line 37) and Temple (col. 14, lines 45-56).

Stockinger et al and the admitted prior art are applied for reasons of record. Thompson had been cited for the teaching of antioxidants including, besides malic acid, a number of other compounds including lecithin, BHA, BHT and certain amines, quinones, propionates, phenols and phosphoric acid. Hence, from Thompson, one of ordinary skill in the art would realize that these antioxidants are considered to be equivalents in the art. While malic acid has been deleted from the claims, citric acid is now being claimed. Temple discloses a number of known anti-oxidants taught in Thompson including lecithin, BHA, BHT, and quinones, propionates, phenols and phosphorus containing materials, as well as citric acid—see col. 14, line 48. Given the teachings in Thompson and Temple, it is submitted that the instant citric acid would have been an obvious antioxidant to use in the article of Stockinger et al.

2. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stockinger et al in view of the admitted prior art as set forth in the instant specification at

page 2, line 22 through page 3, line 5, Thompson (see col. 4, lines 27-42, particularly line 37), Temple (col. 14, lines 45-56) and Byrd (see paragraph 0083).

Stockinger et al, the admitted prior art and Thompson and Temple are applied for reasons of record as set forth in paragraph 1, supra, the references failing to teach the use of a ketoglutarate as the antioxidant. However, Byrd discloses that alpha ketoglutarate is a well known antioxidant and hence its employment in the article of Stockinger et al would have been obvious. It is certainly well known in the art to employ compounds known for their properties and it is submitted that the instant antioxidants are well known in the art.

3.Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

In view of the amendment, new art has been applied which is submitted to render the instant claims obvious. Indeed, all applicant has done is employ a compound—citric acid or a ketoglutarate—that is well known in the art for its antioxidizing properties and its biocompatibility. As such, it is respectfully submitted that the instant claims are obvious over the art as applied.

4.Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mathieu D. Vargot whose telephone number is 571 272-1211. The examiner can normally be reached on Mon-Fri from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson, can be reached on 571 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Vargot
September 12, 2008

/Mathieu D. Vargot/
Primary Examiner, Art Unit 1791